

§ 960.205 Drug use by applicants: Obtaining information from drug treatment facility.

(a) *Purpose.* This section addresses a PHA's authority to request and obtain information from drug abuse treatment facilities concerning applicants. This section does not apply to information requested or obtained from drug abuse treatment facilities other than under the authority of section 6(t).

(b) *Additional terms* used in this section are as follows:

(1) *Currently engaging in illegal use of a drug.* Illegal use of a drug occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

(2) *Drug abuse treatment facility.* An entity:

(i) That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and

(ii) That is either an identified unit within a general care facility; or an entity other than a general medical care facility.

(c) *Authorization by household member for PHA to receive information from a drug abuse treatment facility.* (1) The PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head or spouse regardless of age, one or more consent forms signed by such household member that:

(i) Requests any drug abuse treatment facility to inform the PHA only whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;

(ii) Complies with the form of written consent required by 42 CFR 2.31; and

(iii) Authorizes the PHA to receive such information from the drug abuse treatment facility, and to utilize such information in determining whether to prohibit admission of the household member to the PHA's public housing program in accordance with § 960.203. (See the Public Health Service Act, 42 U.S.C. 290dd-2, and implementing regulations at 42 CFR part 2, with respect to responsibilities of the drug abuse treatment facility.)

(2) The consent form submitted for a proposed household member must ex-

pire automatically after the PHA has made a final decision to either approve or deny the admission of such person.

(d) *PHA request for information from drug use treatment facility.* (1) The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in § 5.100 of this title).

(2) The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.

(3) A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd-2).

(4) The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.

(5) A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section. The PHA may not pass along to the applicant or tenant the costs of obtaining this information.

(e) *Prohibition of discriminatory treatment of applicants.* (1) A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies, obtaining a signed consent form from the proposed household members:

(i) *Policy A—Request for all families.* Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with paragraph (d) of this section before admitting any family to the PHA's public housing program. For each such family, the request must be submitted for each proposed household member described in paragraph (c)(1) of this section.

(ii) *Policy B—Request for certain household members.* Under Policy B, the PHA must submit a request to a drug

abuse treatment facility only with respect to each proposed household member:

(A) Whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission under § 960.205; or

(B) Whose prior tenancy records indicate that the proposed household member:

(1) Engaged in the destruction of property;

(2) Engaged in violent activity against another person; or

(3) Interfered with the right of peaceful enjoyment of the premises of other residents.

(4) The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.

(f) *Records management and confidentiality.* Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:

(1) Is maintained confidentially in accordance with section 543 of the Public Health Service Act (12 U.S.C. 290dd-2);

(2) Is not misused or improperly disseminated; and

(3) Is destroyed, as applicable:

(i) Not later than 5 business days after the PHA makes a final decision to admit the person as a household member under the PHA's public housing program; or

(ii) If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired without the filing of a civil action or until final disposition of any such litigation.

§ 960.206 Waiting list: Local preferences in admission to public housing program.

(a) *Establishment of PHA local preferences.* (1) The PHA may adopt a system of local preferences for selection of families admitted to the PHA's public

housing program. The PHA system of selection preferences must be based on local housing needs and priorities as determined by the PHA. In determining such needs and priorities, the PHA shall use generally accepted data sources. Such sources include public comment on the PHA plan (as received pursuant to § 903.17 of this chapter), and on the consolidated plan for the relevant jurisdiction (as received pursuant to part 91 of this title).

(2) The PHA may limit the number of applicants that qualify for any local preference.

(3) PHA adoption and implementation of local preferences is subject to HUD requirements concerning income-targeting (§ 960.202(b)), deconcentration and income-mixing (§ 903.7), and selection preferences for developments designated exclusively for elderly or disabled families or for mixed population developments (§ 960.407).

(4) The PHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(b) *Particular local preferences—(1) Residency requirements or preferences.* (i) Residency requirements are prohibited. Although a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area ("residency preference area"). A county or municipality may be used as a residency preference area. An area smaller than a county or municipality may not be used as a residency preference area.

(iii) Any PHA residency preferences must be included in the statement of PHA policies that govern eligibility, selection and admission to the program, which is included in the PHA annual plan (or supporting documents) pursuant to part 903 of this chapter. Such policies must specify that use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the